IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/663,016	Confirmation No.:	1738
Applicant	:	Polly Stecyk		
Filing Date	:	9/15/2003		
Title	:	PASSIVE MEDIA RATINGS ENFORCEMENT SYSTEM		
Group Art Unit	:	2423		
Examiner	:	Junior O. Mendoza		
Docket No.	:	705397.4005		
Customer No.	:	34313		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir/Madam:

This is an appeal to the Board of Patent Appeals and Interferences from a Final Office

Action dated February 1, 2011. A Notice of Appeal was timely submitted on May 2, 2011.

Applicant submits this Appeal Brief in accordance with 37 C.F.R. § 41.37.

I.   <u>REAL PARTY IN INTEREST</u>

The real party in interest is MITSUBISHI DIGITAL ELECTRONICS AMERICA, INC., a corporation organized and existing under and by virtue of the laws of the STATE OF DELAWARE and having its principal place of business at 9351 JERONIMO ROAD, IRVINE, CALIFORNIA 92618.

37 C.F.R. § 41.37 (c)(1)(i).

II.   RELATED APPEALS AND INTERFERENCES

Applicant's appeal in U.S. Patent Application Serial No. 10/663,016 is a pending appeal that may be related to, directly affect or would be directly affected by or have a bearing on the Board's decision in the present appeal. Applicant is not aware of any additional prior or pending appeals, interferences, or judicial proceedings that are related to, directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

37 C.F.R. § 41.37 (c)(1)(ii).

III. <u>STATUS OF CLAIMS</u>

At the time of the Notice of Appeal, Claims 1-14 and 22-35 were pending in the application and were finally rejected.

Applicant appeals the final rejection of Claims 1-14 and 22-35.

37 C.F.R. § 41.37 (c)(1)(iii).

IV.   STATUS OF AMENDMENTS

Applicant has not filed any amendments subsequent to final rejection.

37 C.F.R. § 41.37 (c)(1)(iv).

V.   SUMMARY OF CLAIMED SUBJECT MATTER

Applicant appeals the rejection of claims 1-14 and 22-35, of which claims 1 and 22 are independent claims.

The application and claims are directed to systems for limiting and/or supervising exposure to a consumer electronics device through passive systems that incorporate a facial recognition system. The consumer electronics device can include televisions, video cassette recorders, audio equipment, or any other consumer electronics device whereby user discernable information can be generated. The facial recognition system is used to identify viewers present in the viewing area. Viewer profiles are established that include content-based specifications and time range specifications for individual viewers. Viewer profiles for the viewers in the viewing area are then compared against timing information and/or content-based information for the user discernable information. A control signal is then generated based on the comparison that either allows or blocks a program signal for the user discernable information.

Claim 1

Independent claim 1 recites a consumer electronics device having media supervision circuitry for supervising personal exposure to user discernable information. Claim 1 may be understood with reference to one embodiment of an exemplary passive enforcement system as shown in Figure 3B of the present application and reproduced below for the Board's convenience:
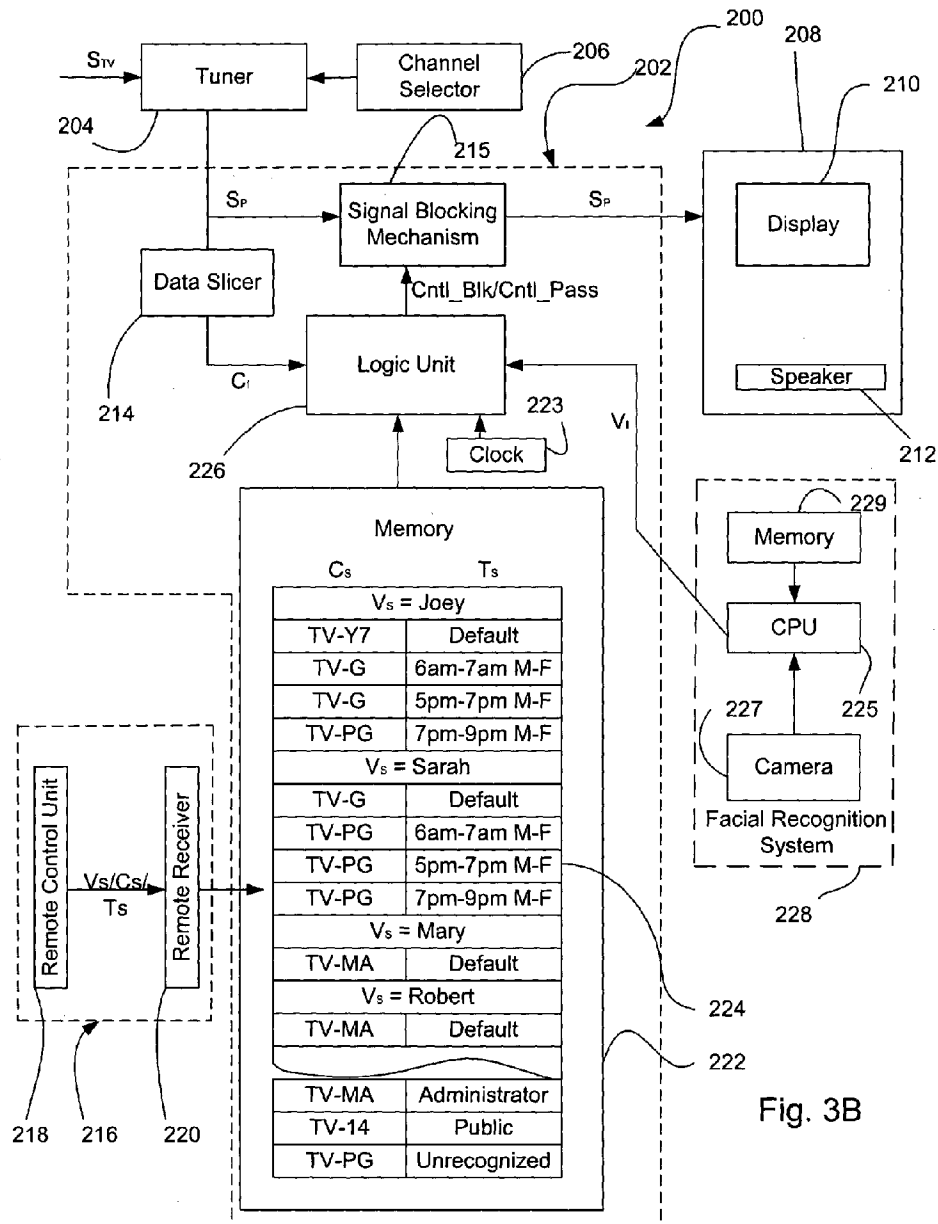
Fig. 3B

Claim 1 recites a first logic unit configured for generating viewer indicators indicative of viewers present in a viewing area (225, 227, 228, 229; pp. 19:6-19). Claim 1 further recites a non-volatile memory configured for receiving a plurality of viewer profiles wherein the viewing profiles include content-based specifications and wherein one or more of the plurality of viewing profiles include two or more time range specifications and different content-based specifications

corresponding to each of the two or more time range specifications (222; p. 10:4-7; p. 17:1-6; p. 18:9-18).

Claim 1 also recites a second logic unit that is coupled to the first logic unit and the non-volatile memory (226; pp. 18:19 - 19:5). The second logic unit is configured for comparing a viewer indicator with viewing profiles to identify an active viewing profile and a content–based indicator and a reference time with the active viewing profile (pp. 18:19 - 19:5). Claim 1 further recites that the second logic unit is configured for generating a control signal in response to the comparison between the content–based indicator and the reference time with the active viewing profiles (pp. 18:19 - 19:5).

Claim 1 also recites a signal impairment mechanism coupled to the second logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the two or more time range specifications corresponding to the active viewing profile or the content-based indicator does not exceed the content-based specification corresponding to one of the two or more of time range specifications of the active viewing profile within which the reference time falls (215; p. 17:22-28; pp. 18:19 - 19:5) or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the two or more time range specifications of the active viewing profile within which the reference time falls within (p. 17:22-28; pp. 18:19 - 19:5).

Claims 2-14 depend directly or indirectly from claim 1, and further comprise additional features of the device claimed in claim 1.

Claim 22

Claim 22 recites a device (208) including a viewer monitoring system (225, 227, 228, 229; pp. 19:6-19). Claim 22 further recites a non–volatile memory that is configured to receive a plurality of viewing profiles for selected viewers, wherein the plurality of viewing profiles include a plurality of time range specifications and different content-based specifications corresponding to each of the plurality of time range specifications (222; p. 10:4-7; p. 17:1-6; p. 18:9-18).

Claim 22 also recites a logic unit that is coupled to the viewer monitoring system and the non–volatile memory that is configured for comparing a viewer indicator with viewing profiles to identify an active viewing profile and a content–based indicator and a reference time with the active viewing profile (pp. 18:19 - 19:5). The logic unit is further configured to generate a control signal in response to the comparison between the content–based indicator and the reference time with the active viewing profiles (pp. 18:19 - 19:5).

Claim 22 further recites a signal impairment mechanism coupled to the logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the plurality of time range specifications corresponding to the active viewing profiles or the content-based indicator does not exceed the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls (215; p. 17:22-28; pp. 18:19 - 19:5) or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls within (p. 17:22-28; pp. 18:19 - 19:5).

Claims 23-35 depend directly or indirectly from claim 22, and further comprise additional features of the device claimed in claim 22.

37 C.F.R. § 41.37 (c)(1)(v).

VI.   <u>GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u>

Whether claims 1-14 and 22-35 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 7,134,130 to Thomas ("Thomas") in view of U.S. Published Application No. 2004/0078806 by Johnson et al. ("Johnson") further in view of U.S. Published Application No. 2009/0282428 by Rodriguez ("Rodriguez").

37 C.F.R. § 41.37 (c)(1)(vi).

VII. ARGUMENT UNDER 37 C.F.R. §41.37 (c)(1)(vii)

The Examiner has rejected claims 1-14 and 22-35 under 35 U.S.C. § 103(a) as being unpatentable over Thomas in view of Johnson further in view of Rodriguez. These claims are not rendered obvious by this combination of prior art. Contrary to the Examiner's conclusion, the references do not teach or disclose the claimed invention. Furthermore, the Examiner's combination of these references relies upon improper hindsight to reconstruct Applicant's invention. The disclosure of Rodriguez would not be combined by one of skill in the art with either Thomas or Johnson because this would alter the principle of operation of Thomas and Johnson and would make Thomas unsatisfactory for its intended purpose. Thus, even assuming that the three references collectively disclosed the claimed invention (which they do not), the combination of the references is improper and cannot support an obviousness rejection.

1. Independent Claims 1 and 22

Independent claims 1 and 22 are not rendered obvious by the cited combination of references. Thomas discloses a system for <u>viewer-based</u> control of content that utilizes a scanner to detect viewers within the viewing area of the television or other media device. (Thomas, Abstract). The system in Thomas includes profiles for each viewer that include information regarding the type of content that can and cannot be viewed by that particular viewer. (Thomas, Col. 7:56-59). If the viewer is present in the viewing area during display of impermissible content, the signal for the content is impaired or blocked. (Thomas, Col. 8:52 – 9:13). The detection of viewers present in the viewing area, and profiles associated with each individual viewer, is critical to the system disclosed in Thomas. Johnson also describes a <u>viewer-based</u> method and system of controlling access. Johnson describes a method and system for inputting
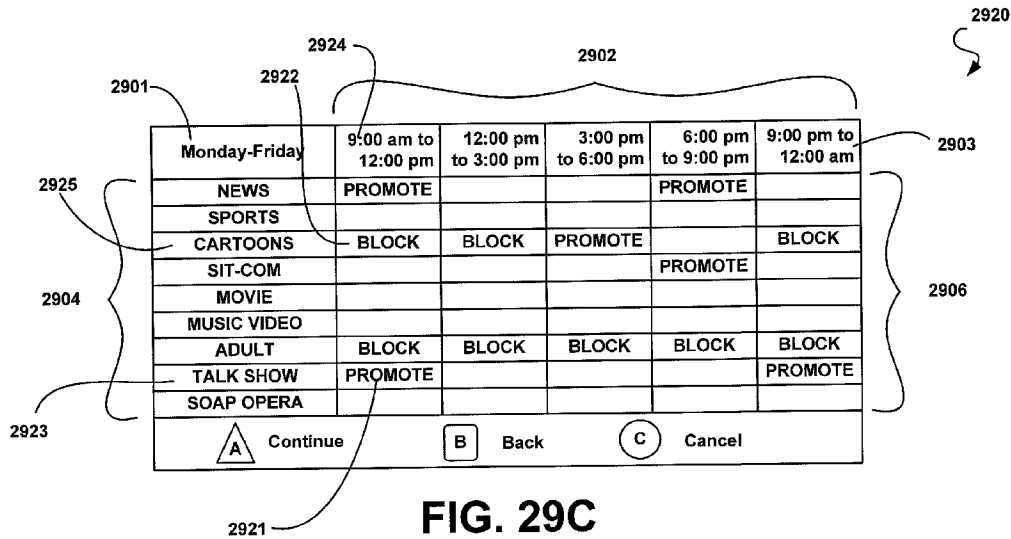
viewer profiles that are specific to an individual user and can include information regarding viewing hours, rating limits, and blocked channels. (Johnson, Abstract, [0011]).
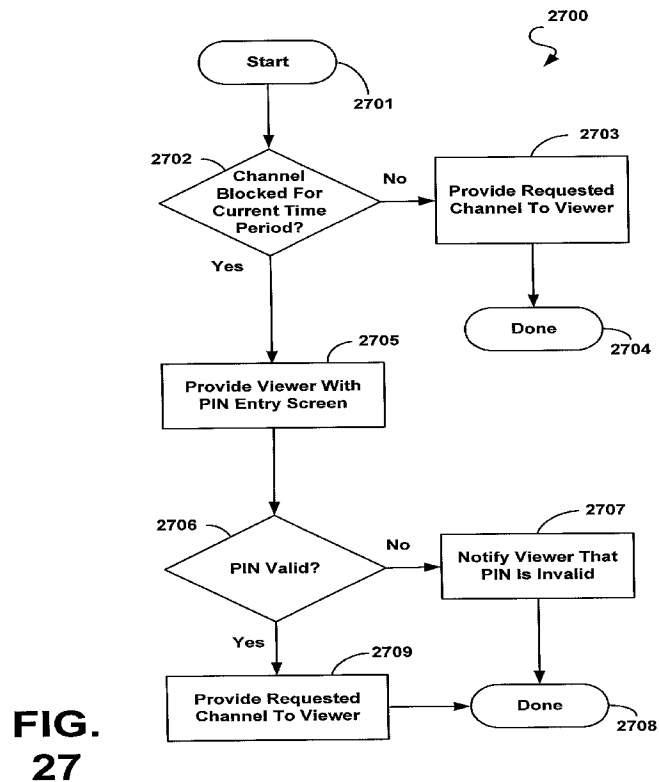
However, as acknowledged by the Examiner, Thomas and Johnson do not teach or disclose a system having individual viewing profiles that include a plurality of time range specifications, wherein each time range specification corresponds to a separate content-based specification. (February 1, 2011 Final Office Action, p. 8). For this limitation, the Examiner relies upon the disclosure in Rodriguez. For the reasons discussed herein, Rodriguez does not disclose this limitation and the combination of Rodriguez with Thomas or Johnson is not permissible to support a § 103 rejection.

Rodriguez teaches a system and method for blocking specified programming during certain time ranges. The blocked programming can be based on the rating or type of the program. For example, Paragraph [0116] of Rodriguez provides "The block entry 2922 indicates the user's preference is to block cartoon programs 2925 during the 9:00 a.m. to 12:00 p.m. time slot 2924. In this manner, the user can specify what is to be included and excluded for certain time periods." (emphasis added). Figure 29C of Rodriguez provides an exemplary entry screen for the time-based program blocking:

FIG. 29C

To overcome a blocked channel, a PIN must be entered. (See Rodriguez, Fig. 27 reproduced below). Upon receipt of the correct PIN, the channel becomes unblocked and the content is provided.

FIG. 27

As a primary matter, the Examiner's use of Rodriguez ignores the claim limitation as a whole. The claim requires that each of the <u>viewing profiles</u> includes a time range specification, not just that time specifications are used in general. Rodriguez does not discuss or suggest the use of <u>viewing profiles</u> and instead the system implements a method that is only based on time and programming ratings or type and blocks particular programming on a system wide basis. In Rodriguez, the program is either blocked or not blocked based on the time schedule without any reference to a viewer or parameters set for individual viewers as is required by the claims.

In addition, the system in Rodriguez is antithetical to the systems of Thomas and Johnson and would not have been combined by one of skill in the art with the <u>viewer-based</u> systems of Thomas and Johnson. Unlike the system claimed by Applicant or those disclosed in Thomas and Johnson, the system in Rodriguez is not based on the viewers and is instead based only on the <u>time</u> of the programming. In Rodriguez, if the channel blocking is overcome by entry of the correct PIN or log-on information, the content is displayed regardless of the viewers present. There is no disclosure in Rodriguez for a system or method that disrupts the program signal if an additional viewer, for example a young child, enters the room unexpectedly. The simple "all or nothing," non-viewer specific system and method relied upon by Rodriguez was <u>explicitly distinguished and criticized</u> in Thomas:

> Channel locks that prevent tuning to certain channels without a password, but once unlocked, manual intervention is required to prevent the viewing of a channel's content by persons for whom that content is unsuitable. The present invention provides the ability to automatically block or terminate the display or playing of such material when someone outside the predetermined allowed audience is present. (Thomas, Col. 6:16-23).

This statement by Thomas underscores the fallacy of the Examiner's conclusion that one of skill in the art would readily combine the teachings of Thomas and Rodriguez. The two

methods are fundamentally diverse. Thomas and Johnson each teach a <u>viewer-based</u> system and method of blocking. The non-viewer based system of Rodriguez would render the system of Thomas unsatisfactory for its intended purpose, therefore there is no suggestion or motivation to make the modification proposed and relied upon by the Examiner. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01. Furthermore, by eliminating blocking dependent on the viewers and instead using only a time-based system, modifying Thomas in light of Rodriguez would impermissibly change the principle of operation of Thomas. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); MPEP § 2143.01. Therefore, a person of ordinary skill in the art would not look to a <u>time-based</u> system such as that disclosed in Rodriguez to alter or adjust the <u>viewer-based</u> blocking systems of Thomas or Johnson.

The Examiner has used improper hindsight to support his obviousness rejection as the prior art does not support combination of the cited references. The Examiner has attempted to reconstruct the invention of the present application by combining references that would not be combined by one of skill in the art. Thomas specifically teaches away from non-viewer-based systems such as that in Rodriguez, and thus the Examiner's rejection based on the combination of these references should be withdrawn.

2.   <u>Dependent Claims 2-14 and 23-35</u>

Since independent claims 1 and 22 are patentable for the reasons discussed above, and claims 2-14 and 23-35 depend from and carry all the limitations of from a patentable independent claim, claims 2-14 and 23-35 are patentable.

VIII. CONCLUSION

Applicants have demonstrated that the final rejection of claims 1-14 and 22-35 is improper and that claims 1-14 and 22-35 should be allowed. Applicants request that the Final Office Action of February 1, 2011 be reversed and the present application be allowed.

The Commissioner is authorized to charge any fee which may be required in connection with this Appeal Brief to deposit account No. 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

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Claims Appendix

1.   A consumer electronics device having media supervision enforcement circuitry for supervising personal exposure to user discernible information, comprising:

a first logic unit configured for generating viewer indicators indicative of viewers present in a viewing area;

non–volatile memory configured for receiving a plurality of viewing profiles for selected viewers, wherein the plurality of viewing profiles include content-based specifications and wherein one or more of the plurality of viewing profiles include two or more time range specifications and different content-based specifications corresponding to each of the two or more time range specifications;

a second logic unit coupled to the first logic unit and the non–volatile memory and being configured for comparing a viewer indicator with viewing profiles to identify an active viewing profile and a content–based indicator and a reference time with the active viewing profile, the second logic unit being further configured for generating a control signal in response to the comparison between the content–based indicator and the reference time with the active viewing profiles; and

a signal impairment mechanism coupled to the second logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the two or more time range specifications corresponding to the active viewing profile or the content-based indicator does not exceed the content-based specification corresponding to one of the two or more of time range specifications of the active viewing profile within which the reference time falls or passing the program signal there through with substantial impairment if the content-based indicator exceeds

the content-based specification corresponding to one of the two or more time range specifications of the active viewing profile within which the reference time falls within.

2.   The consumer electronics device of claim 1 wherein each of the viewing profiles comprises a viewer specification and a content–based specification corresponding to the viewer specification;

3.   The consumer electronics device of claim 2, further comprising an output device coupled to the signal impairment mechanism for transforming the program signal into the user discernible information.

4.   The consumer electronics device of claim 1, further comprising a data entry system for selectively inputting the viewer and content–based specifications into the non–volatile memory for storage.

5.   The consumer electronics device of claim 1, wherein the non–volatile memory includes a look–up list for storing a plurality of viewer specification and associated content–based specifications.

6.   The consumer electronics device of claim 1, wherein the program signal carries the content–based indicator, and further comprising a data extraction device coupled to the logic unit for extracting the content–based indicator.

7.   The consumer electronics device of claim 1, wherein the signal impairment device is a switch.

8.   The consumer electronics device of claim 1, wherein the output device is a television system audio/video output device.

9.   The consumer electronics device of claim 1, wherein the first logic unit is a computer configured to run facial recognition software.

10.   The consumer electronics device of claim 1, further comprising a camera coupled to the first logic unit and configured to continuously scan the viewing area associated with the consumer electronic device.

11.   The consumer electronics device of claim 1 wherein each of the viewing profiles comprises a viewer specification, a finite time range specification and a content–based specification corresponding to the viewer and time range specifications.

12.   The consumer electronics device of claim 1, further comprising a data entry system for selectively inputting the viewer, time range and content–based specifications into the non–volatile memory for storage.

13.   The consumer electronics device of claim 1, wherein the non–volatile memory includes a look–up list for storing a plurality of viewer specification and associated time range and content–based specifications.

14.   The consumer electronics device of claim 1, wherein the program signal carries the content–based indicator and timing information, and further comprising a data extraction device coupled to the logic unit for extracting the content–based indicator and timing information.

22.   A device comprising:

a viewer monitoring system;

non–volatile memory configured for receiving a plurality of viewing profiles for selected viewers, wherein the plurality of viewing profiles include a plurality of time range specifications and different content-based specifications corresponding to each of the plurality of time range specifications;

a logic unit coupled to the viewer monitoring system and the non–volatile memory and being configured for comparing a viewer indicator with viewing profiles to identify an active viewing profile and a content–based indicator and a reference time with the active viewing profile, the logic unit being further configured for generating a control signal in response to the comparison between the content–based indicator and the reference time with the active viewing profiles; and

a signal impairment mechanism coupled to the logic unit and configured for, based on the control signal, selectively passing a program signal there through without substantial impairment if the reference time falls outside of each of the plurality of time range specifications corresponding to the active viewing profiles or the content-based indicator does not exceed the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls or passing the program signal there through with substantial impairment if the content-based indicator exceeds the content-based specification corresponding to one of the plurality of time range specifications of the active viewing profile within which the reference time falls within.

23.   The device of claim 22 wherein the viewer monitoring system comprises a facial recognition system.

24.   The device of claim 23 wherein the facial recognition system comprises a computer configured to run a facial recognition program and a camera coupled to the computer.

25.   The device of claim 22 wherein each of the viewing profiles comprises a viewer specification and a content–based specification corresponding to the viewer specification.

26.   The device of claim 22, further comprising an output device coupled to the signal impairment mechanism for transforming the program signal into the user discernible information.

27.   The device of claim 22, further comprising a data entry system for selectively inputting the viewer and content–based specifications into the non–volatile memory for storage.

28.   The device of claim 22, wherein the non–volatile memory includes a look–up list for storing a plurality of viewer specifications and associated content–based specifications.

29.   The consumer electronics device of claim 22, wherein the program signal carries the content–based indicator, and further comprising a data extraction device coupled to the logic unit for extracting the content–based indicator.

30.   The consumer electronics device of claim 22, wherein the signal impairment device is a switch.

31.   The consumer electronics device of claim 22, wherein the output device is a television system audio/video output device.

32.   The consumer electronics device of claim 22 wherein each of the viewing profiles comprises a viewer specification, a finite time range specification and a content–based specification corresponding to the viewer and time range specifications.

33.   The consumer electronics device of claim 22, further comprising a data entry system for selectively inputting the viewer, time range and content–based specifications into the non–volatile memory for storage.

34.   The consumer electronics device of claim 22, wherein the non–volatile memory includes a look–up list for storing a plurality of viewer specifications and associated time range and content–based specifications.

35. The consumer electronics device of claim 23, wherein the program signal carries the content–based indicator and timing information, and further comprising a data extraction device coupled to the logic unit for extracting the content–based indicator and timing information.

Evidence Appendix

None.

Related Proceedings Appendix

None.